

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 142 of 1976

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX

Versus

SMT.BHARTIDEVI SARABHAI

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Appearance:

MR B.B.NAIK with MR MANISH R BHATT for Petitioner  
MR D.A. MEHTA, MR. R.K. PATEL & MR B.D. KARIA  
for MR KC PATEL for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE A.R.DAVE

Date of decision: 16/12/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The following two questions had arisen out of the order of the Tribunal made in I.T.A No. 1623 (Ahd)/73-74 decided on 24th July, 1975.

1. "Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that the sum of Rs. 53,122/- received by the assessee from various discretionary trusts could not be taxed in the hands of the assessee under Section 166 of the Income Tax Act?"
2. "If the answer to question No.1 is against the assessee, whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the said sum of Rs. 53,122/- was exempt from tax inasmuch as the said sum was paid out of dividends received by the trusts, which were exempt from tax under Section 80-K of the Income Tax Act, 1961?"

Earlier, when this reference had come up for hearing before the Division Bench (B.J.Divan, C.J. and P.D.Desai,J.), the Court, by its order dated 1st March, 1978, following the decision of the Full Bench in CIT Vs. Smt. Kamalini Khatau, reported in 112 ITR 652 which was decided on 23.12.1977, answered the question No.1 in the affirmative in favour of the assessee and against the Revenue and held that in view of the answer given to question No.1, it was not necessary to answer question No.2.

The Revenue approached the Supreme Court by way of Civil Appeal No. 2150/78 against the said decision and the Supreme Court, by its order dated 8.2.1996, taking note of the fact that the decision which was relied on by the High Court in answering the first question in favour of the assessee was reversed by the Supreme Court in CIT Vs. Kamalini Khatau, reported in 209 ITR 101 and following that decision, answered the question No.1 in favour of the Revenue and against the assessee, reversing the decision of the High Court on that point. The Supreme Court observed that since question No.2 referred to the High Court was left unanswered by it, the matter had to go back to the High Court for deciding the question No.2 in accordance with law. That is how this reference has been listed for our opinion on question No.2.

These two questions were identical to the questions which were referred to the High Court in a cognate matter in the case of Dr. Vikram A.Sarabhai, arising out of ITA No. 1621(AHD/73-74). In that cognate matter also, the High Court had earlier taken a similar view as was done in the present case and the matter was carried to the Supreme Court in Civil Appeals Nos.

2154/78 and 2157/78 and the Supreme Court, by its order dated 7.2.1996, reversing the judgement of the High Court on its opinion on question No.1, held that Revenue had the option to assess and recover from either the trustees or from the beneficiaries of a discretionary trust in respect of such income thereafter as has been distributed to and received by the beneficiaries in the course of accounting year and answering question No.1, in negative in favour of the Revenue and against the assessee, directed the question No.2 in the said two references to be gone into and answered by the High Court. Those two references i.e. Income Tax Reference No. 216/77 and Income Tax Reference No. 268/77 came up for hearing on the question No.2, which was identical to the present question No.2, before a Division Bench and the Division Bench, by its decision dated 26.2.1997, answered the question No.2 in the affirmative against the Revenue and in favour of the assessee, in both the references. It was held that the amount of the dividend income received by the trustee which was allowable for deduction under Section 80K, when passed on to the beneficiary, would nonetheless be eligible to the same deduction. When admittedly the amounts were paid by the trust out of the dividend income which was in the hands of the trusts, eligible to deduction under Section 80K as has been found on facts, it was held that the Tribunal was right in holding that such deductible amounts received by the assessee from the discretionary trusts were eligible for deduction under Section 80K of the said Act. The facts and the said question of law in the present case are identical to those in the case of Dr.Vikram A. Sarabhai and the opinion of this Court on question No.2 in the cognate references i.e I.T.R No. 216/77 and I.T.R No.268/77, will hold good even for the present question No.2. Following the reasoning given in the judgement of the Division Bench rendered on 26.2.97 in I.T.R 216/77 and I.T.R 268/77, we answer question No.2 referred to us in the affirmative against the Revenue and in favour of the assessee. The reference stands disposed of accordingly with no order as to costs.

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\*/Mohandas